

RESOLUTION NO. 2016-24

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE SANBORN DRIVE – THUNDER MOUNTAIN ROAD OVERLAY PROJECT; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City of Sedona (“City”) and the State of Arizona, acting by and through its Department of Transportation (“ADOT”), have prepared an Intergovernmental Agreement (IGA) for the Sanborn Drive – Thunder Mountain Road Overlay Project; and

WHEREAS, the City and ADOT are mutually agreeable to entering into an IGA and desire to partner in the repaving of 0.83 miles of Sanborn Drive - Thunder Mountain Road; and

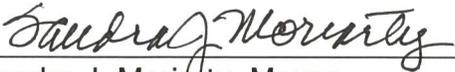
WHEREAS, the City is empowered by A.R.S. § 48-572 to enter into an IGA and by this resolution has authorized the undersigned to execute the IGA on behalf of the City; and

WHEREAS, the City has reviewed the terms of the IGA and determined that it is in the proper form required by A.R.S. §§ 11-951 through 11-954.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA THAT:

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the State of Arizona for the Sanborn Drive – Thunder Mountain Road Overlay Project, and the Mayor is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 12th day of July, 2016.



Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

ADOT File No.: IGA/JPA 16-0005922-I
AG Contract No.: P001201600XXX
Project Name: Sanborn Dr./Thunder Mt
Rd. to Coffee Pot Dr.
Project Location: Sanborn Dr./Thunder
Mt Rd **Federal-aid No.: SED-0(202)T**
ADOT Project No.: T0089 01D/01C
TIP/STIP No.: PNL17-005D &
PNL19- 003C
CFDA No.: 20.205 - Highway Planning
and Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SEDONA

THIS AGREEMENT is entered into this date July 20, 2016, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF SEDONA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties."

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The work proposed under this Agreement, hereinafter referred to as the "Project", consists of asphalt milling and overlay along Sanborn Drive/Thunder Mountain Road for a distance of approximately 0.83 miles. The State will advertise, bid, award and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for approval.
4. The City, in order to obtain federal funds for the design and/or construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.
5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.
6. The Parties will perform their responsibilities consistent with this Agreement; any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

T0089 01D (ADOT Project Management & Design Review (PMDR) Cost, non-federal-aid):

PMDR Costs \$ 30,000.00

T0089 01C (construction):

Federal-aid funds @ 94.3% (capped) \$ 371,657.00

City's match @ 5.7% \$ 22,465.00

City's match @ 100% \$ 187,878.00

Subtotal – Construction \$ 582,000.00**

TOTAL Estimated Project Cost \$ 612,000.00

Total Estimated City's Funds \$ 240,343.00

Total Federal Funds \$ 371,657.00

*(Included in the City's Estimated Funds)

** (Includes 20% to 25% CE and 5% Project contingencies)

8. The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:
 - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.
 - b. Execute this Agreement, and prior to performing or authorizing any work, invoice the City for the initial PMDR costs, estimated at **\$30,000.00**. If actual PMDR costs exceed the estimate during the development of design, notify the City and obtain concurrence prior to continuing with the development of design. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.
 - c. After receipt of the PMDR costs, review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction administration of the Project, and provide comments to the City as appropriate.
 - d. Execute this Agreement and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **\$210,343.00**. Once the construction costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual Project construction costs.

- e. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.
 - f. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.
 - g. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.
 - h. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within 90 days of project closeout finalization.
 - i. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.
2. The City will:
- a. Designate the State as City's authorized agent for the Project.
 - b. Within 30 days of receipt of an invoice from the State pay the City's PMDR costs, estimated at **\$30,000.00**. If, during the development of the Project, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR costs of the Project.
 - c. Prepare and provide the design plans, specifications and other such documents and services required for construction bidding and construction of the Project, in a format acceptable to the State and incorporate comments from the State as appropriate.
 - d. Enter into an agreement with the design consultant which states that the design consultant will provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.
 - e. Within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **\$210,343.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.
 - f. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within 30 days of receipt of an invoice from the State.
 - g. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the

scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

- h. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.06 Monitoring Process and 9.07 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.
- i. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.
- j. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.
- k. Upon notification by the State of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.
- l. Upon notification by the State of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by

virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.
4. The cost of construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.
5. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.
6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
7. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine months of the sub recipient fiscal year end.
ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov
9. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
10. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
11. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
12. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive

Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

13. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.
14. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
16. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

For Agreement Administration:

Arizona Department of Transportation
 Joint Project Administration
 205 S. 17th Avenue, Mail Drop 637E
 Phoenix, Arizona 85007
 (602) 712-7124
 (602) 712-3132 Fax
JPABranch@azdot.gov

City of Sedona
 Attn: J. Andy Dickey
 102 Roadrunner Drive,
 Sedona, Arizona 86336
 928-203-5039
adickey@sedonaaz.gov

For Project Administration:

Arizona Department of Transportation
 Eric Boyles
 Traffic Safety Section
 1615 West Jackson Street MD 065R
 205 S. 17th Avenue, Mail Drop 637E
 602-712-4428
eboyles@azdot.gov

City of Sedona
 Attn: J. Andy Dickey
 102 Roadrunner Drive,
 Sedona, Arizona 86336
 928-203-5039
adickey@sedonaaz.gov

For Financial Administration:

Arizona Department of Transportation
 Joint Project Administration
 205 S. 17th Avenue, Mail Drop 637E
 Phoenix, Arizona 85007
 (602) 712-7124
 (602) 712-3132 Fax

City of Sedona
 Attn: J. Andy Dickey
 102 Roadrunner Drive,
 Sedona, Arizona 86336
 928-203-5039
adickey@sedonaaz.gov

18. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination, of each Party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF SEDONA

STATE OF ARIZONA

Department of Transportation

By 
SANDRA J. MORIARTY
Mayor

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

ATTEST:

By 
SUSAN L. IRVINE, CMC
City Clerk



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION /
TRANSPORTATION SECTION

DAWN NORTHUP
DIVISION CHIEF COUNSEL
SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012016002013 (**ADOT IGA/JPA 16-0005922-I**), an Agreement between public agencies, the State of Arizona and the City of Sedona, has been reviewed pursuant to A.R.S. §§ 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 20, 2016

MARK BRNOVICH
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:# 5210549
Attachment

ATTORNEY APPROVAL FORM FOR THE CITY OF SEDONA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SEDONA, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12th day of JULY, 2016.

A handwritten signature in blue ink, appearing to read "R. Pickels, Jr.", is written over a horizontal line.

Robert L. Pickels, Jr., City Attorney